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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

TERRANCE ROBINSON,

Plaintiff and Appellant,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT et al.,

Defendants and Respondents.

B191257

(Los Angeles County
Super. Ct. No. BC337094)

Appeal from a judgment of the Superior Court of Los Angeles County,

John P. Shook, Judge. Affirmed.

Frank Sanes, Jr. for Plaintiff and Appellant.

Gutierrez, Preciado & House, Calvin House and Ann D. Wu for Defendants and
Respondents.

Plaintiff Terrance Robinson (plaintiff) appeals from a judgment entered after the trial court sustained, without leave to amend, the demurrer filed by defendants Los Angeles Unified School District, Chief Wesley Mitchell, and Officer John Taylor (school district, Chief Mitchell, and Officer Taylor, and collectively, defendants). Defendants' demurrer was based on the doctrine of res judicata, with defendants asserting, and the trial court so finding, that the claims plaintiff asserts in this case are identical to those asserted by him in a federal case that was dismissed with prejudice when the federal district court sustained defendants' general demurrer to the complaint in that suit.

On appeal, plaintiff contends the trial courts in the federal case and the instant case lacked jurisdiction over the defendants and therefore the order of dismissal in the federal case and the judgment in the instant case are void, and the judgment must be reversed. We disagree. We will affirm the judgment because plaintiff's position conflicts with basic rules of civil procedure.

BACKGROUND OF THE CASE

1. Plaintiff's First Suit

Plaintiff has filed three suits based on the same set of circumstances. The first suit was filed in the County of Los Angeles on February 22, 2002. A first amended complaint was filed on July 15, 2002. Only the school district and Officer Taylor were named as defendants in that suit.

Asserting causes of action for assault and battery, false arrest and imprisonment, intentional infliction of emotional distress, and negligent infliction of emotional distress,

this first suit alleged plaintiff was a student at Hamilton High School on February 22, 2001, and on that day, his rights under the United States Constitution and the California Constitution were violated in the following manner. As he was returning to a class, a security guard told him he was not allowed on campus. Plaintiff asked to speak to the dean or to his track coach, and plaintiff was taken to the dean's office by two campus police officers, one of whom was defendant Officer Taylor. While in the dean's office, Officer Taylor, without justification or provocation, grabbed plaintiff, threw plaintiff to the floor, and handcuffed him. Plaintiff was then arrested, without legal justification, finger printed, and booked.

By order dated and filed May 2, 2003, this first suit was dismissed without prejudice on the ground plaintiff failed to comply with the filing requirements of California's Tort Claims Act and therefore his amended complaint failed to state a cause of action. A judgment awarding costs in favor of the school district and Officer Taylor was also signed and filed that day. Although plaintiff filed an appeal in that case, the appeal was dismissed for failure to file an opening brief.

2. The Second Suit

Plaintiff's second suit was filed in federal district court on March 2, 2005. This time causes of action were alleged against all three of the defendants. Plaintiff alleged the same fact scenario as was alleged in his first suit. He also alleged the same four causes of action, and added a fifth cause of action for violation of civil rights under 42 U.S.C. § 1983. Additionally, he added allegations that he is a black male, that he was currently serving in the United States Marine Corps in Japan, and that Chief

Mitchell is the school district's chief of police and head of the school police department. Apparently a first amended complaint was filed at some point in time.

Once again, the defendants asserted plaintiff failed to state a claim against them, and once again plaintiff's suit was dismissed on that ground. However, this time the ground for dismissal was that the suit was barred by the two-year statute of limitations in Code of Civil Procedure section 335.1, and the dismissal was made with prejudice. The order granting the motion to dismiss was entered on June 29, 2005. There is no indication an appeal was filed in that case.

3. *The Third Suit*

Plaintiff's third suit is the one before us now. It was filed on July 25, 2005. The complaint essentially is the same as the complaint filed by plaintiff in the federal suit, with the exception that it alleges plaintiff filed a timely claim with the school district under the Tort Claims Act and such claim was rejected.

By papers dated November 7, 2005, defendants demurred to the complaint on the ground it is barred by the doctrine of res judicata. At oral argument on March 3, 2006, the trial court agreed the instant suit must fail under that doctrine. Finding the claims made by plaintiff are identical to those made by him in the federal court, the court held the federal district court's order of dismissal was a final order that precludes relitigation of those claims.

On March 24, judgment in the instant case in favor of defendants was signed and filed. Thereafter, plaintiff filed this timely appeal.

CONTENTIONS ON APPEAL

Plaintiff contends the dismissal entered in the federal case and the judgment entered in the instant case are void and may be set aside at any time because they were entered when the respective trial courts lacked personal jurisdiction over the defendants. This asserted lack of personal jurisdiction is based on plaintiff's representation that there was no service of process, or no proper service, in those cases. Thus, his argument goes, because the dismissal in the federal case was not properly entered, it cannot be the basis of an application of the doctrine of res judicata in the instant case.

DISCUSSION

Judgments and orders of lower courts are presumed to be correct and persons challenging them must affirmatively show reversible error. (*Walling v. Kimball* (1941) 17 Cal.2d 364, 373.) It is improper appellate practice to incorporate by reference, into an appellate brief, points and authorities contained in trial court papers, even if the trial court papers are part of the appellate record. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334.) Yet, that is exactly what plaintiff has done in this appeal. Instead of setting out analysis to support his contention that the dismissal and judgment are void and therefore may be set aside at any time, plaintiff has simply cited us to his trial court papers filed in opposition to the demurrer in this case. Like the court in *Garrick Development Co.*, “[w]e do not consider such arguments on appeal.” (*Ibid.*)

Plaintiff's assertion that the trial courts lacked personal jurisdiction over the defendants, and that this inures to his benefit to make the dismissal and judgment in

those cases void, fails as a matter of law. Code of Civil Procedure section 410.50, subdivision (a) states that “[a] general appearance by a party is equivalent to personal service of summons on such party.” Code of Civil Procedure section 1014 provides that filing a demurrer constitutes such an appearance. Plaintiff ignores those basic rules of California civil procedure, and he provides no authority showing that similar rules are not applicable in the federal courts. Clearly he has not met his burden of affirmatively showing reversible error.

DISPOSITION

The judgment is affirmed. Costs on appeal to defendants.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.